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RICHARD W. Wieking
Clerk, US Dist Ct. North Cal.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM A. KENT (formerly GOICHMAN), Plaintiff v. W.C. KELLY, THOMAS FRAZIER, DAVID MARSHALL and HARRY GIEM SERVICE STATION, Defendants	Civil No. 74-1229 SW ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OR REHEARING OF ORDER DATED August 22, 1996; DENYING CITY OF CARMEL'S REQUEST FOR SANCTIONS

Plaintiff, William Goichman, now known as William Kent ("Kent"), filed a "Motion for an Order to Show Cause Upon the City of Carmel and the Carmel Police Department and Why it Should not be Held in Contempt" pursuant to this Court's 1979 judgment. This Court denied the motion on August 22, 1996, on the grounds that this Court lacked jurisdiction over the purported defendants City of Carmel and Carmel Police Department (collectively "Carmel"). Kent now seeks reconsideration/rehearing of that decision.

BACKGROUND

On April 13, 1974, Plaintiff William Kent parked his rented car on a city street in Carmel-by-the-Sea, California so

that he could visit the beach. The car was parked in front of a "No Parking" sign and at such an angle that the car partially obstructed one lane of traffic.

While Kent remained on the beach, a resident of Carmel called the police department to complain that Kent's car was obstructing an intersection. In response, Officers William Kelly and Thomas Frazier went to the intersection where they confirmed that the car was a traffic hazard. The police department dispatcher then called the Harry Giem Mobil Service Station to send a truck to tow Kent's car.

Kent returned from the beach to find his car gone, but later located the car at Giem's Service Station. He immediately climbed into the driver's seat and attempted to drive away. One of Giem's attendants saw Kent and tried to prevent him from removing the car without paying the $12.50 towing fee. When Kent objected vociferously, the station manager, David Marshall, came over to find out what was going on. Eventually, a police officer was called to the scene.

After a heated discussion, Kent paid the $12.50 towing bill and drove away. He filed this suit several months later in June 1974. In 1975, the federal district court entered a judgment finding California Vehicle Code Section 22851 unconstitutional and enjoining various defendants from enforcing that provision. In 1979, this Court entered a final judgment. enjoining defendants (Police Officer W.C. Kelly, Police Officer Thomas Frazier, Police Officer David Marshall, and the Harry Giem Service Station) from continuing to employ their towing policies and procedures.

The original Complaint did not name the city of Carmel nor the Carmel Police Department. When Kent attempted to join the City of Carmel as a defendant, this Court, on May 2, 1979, explicitly denied his motion. Neither the City of Carmel nor the Carmel Police Department ever made an appearance in this action. Furthermore, Kent's attempt to certify a defendants' class made up of all Carmel police officers who had enforced Carmel's towing ordinance was denied by this Court on several occasions and affirmed

upon appeal by the Ninth Circuit.

Nearly ten years ago Kent began to send correspondence to the City of Carmel seeking information as to whether the City had changed its towing policies pursuant to the 1979 judgment. Kent also suggested in the correspondence that the City use his legal services to rewrite their policies. In fact, the letters contain barely veiled threats that Kent would sue the City if the City failed to engage Kent's legal services. After the City resisted Kent's overtures, Kent brought the motion for an order to show cause why Carmel should not be held in contempt for failing to remedy the unconstitutionality of the city's towing procedures. This Court denied that motion in an August 22, 1996 order, explaining that while [it](sic) is true that this Court's original 1979 judgment did refer to the City and the Police Department, these references resulted from a clerical oversight and did not operate to add them as defendants to the lawsuit.

In the present motion, Kent seeks rehearing/

reconsideration of the Court's August 22, 1996 order.

DISCUSSION

1. Kent's Motion

Kent claims that this Court's order holding that Carmel was not a party to this litigation, makes a "mockery of everything everybody was doing in this case." He says the order "eviscerates" the efforts of many attorneys and judges. Kent complains that this Court violated his due process rights by "sua sponte" 'amending' the 1979 judgment to remove purported defendant Carmel. In his brief, Kent basically threatens to launch a whole new line of litigation (including suits against this Court for violation of his due process rights) if the Court does not resolve this motion in his favor. Kent asserts three legal theories to support his motion.

a. The Real-Party-In-Interest Argument

Kent argues that this Court must enforce the injunction against the City of Carmel because it was either a party or the real party in interest. As discussed above, the record shows that Carmel never was defendant in this case,

and that Kent was well aware of that fact.

As for the argument that Carmel should be enjoined as the real party in interest, Kent asserts that under Brandon v. Holt, 469 U.S. 464, 472-473 (1985), a civil rights suit against government officials is in effect a suit against the City not named as a defendant. Brandon does not govern this case, however, as it concerned liability for payment of damages, not questions as to which parties were bound by an injunction.

b. The Principal-Agent Argument

Kent also argues that "injunctive law allows adding those in concert (sic) to the injunctive decree." Citing Ross v. Superior Court, 19 Cal.3d 899 (1977), Kent asserts that a court of equity can enjoin those acting in concert with the defendant from doing some illegal or unconstitutional act, event though not named in the complaint. Ross, however, held that an injunction issued against a governmental agency is binding on its agents, employees , and successors in office, not the other way around. Ross v. Superior Court, 19 Cal. 3d 899 (1977). In other words, Kent attempts to hold a

government to an injunction issued against its agents, while Ross only authorizes courts to enjoin agents pursuant to an injunction issued against the government agency. Therefore, Kent's argument must fail.

c. The Champion of Constitutional Rights Argument

In his desperation to keep this case alive, Kent adds that this Court must recognize Carmel as a defendant, otherwise potential violations of constitutional rights may go unredressed. This Court reminds Kent that he is free to pursue an independent action against Carmel, but of course Kent, an attorney, must recognize that the doctrine of standing would prevent him from pursuing an independent federal lawsuit. Plaintiffs must show a concrete "injury in fact" to satisfy the standing requirement. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). Kent had standing in his original lawsuit because his car was towed. Kent has not produced any facts that would show standing to bring a new lawsuit against Carmel. This Court therefore advises Kent, who portrays

himself as a roving champion of constitutional justice, that he should first find a client who has been deprived of his or her constitutional rights before attempting to renew his general crusade for justice against municipalities that authorize the towing of illegally parked vehicles.

2. Carmel's Request for Sanctions

A motion for sanctions under Rule 11 must "be made separately from other motions and requests . . . ." Defendants failed to make a separate motion for sanctions, but included the request in the body of their Memorandum in Opposition to Plaintiff's Motion for Reconsideration. Furthermore, Defendants failed to serve a request for sanctions at lest 21 days before filing it with the Court, as required by Fed. R.Civ. P. 11(c)(1)(A). Due to the Defendants' failure to comply with the procedural requirements of Rule 11, their request must be DENIED.

CONCLUSION

Based on the foregoing, this Court DENIES Plaintiff's motion for reconsideration/rehearing and DENIES Defendants' request for sanctions.

IT IS SO ORDERED.

Date: 25/Nov./96

signed

SPENCER WILLIAMS
United States District Judge

APPENDIX V

Original Filed
May 14, 1979
William L. Whittaker, Clerk
US Dist Dt. North.Dist Cal.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIAM A. GOICHMAN, Etc., Plaintiff vs. W.C. KELLY, et al., Defendants.	C. 74-1229 CFF **FINAL JUDGMENT**

In pursuance of the Order of court dated May 2, 1979, this Court orders Final Judgment to be entered as follows:

1. In favor of the plaintiff and against defendants "Harry Giem Service Station," David Marshall and W.C. KELLY in the sum of Twelve Dollars ($12.50) and Fifty cents, with interest form April 13, 1974.

2. In favor of the plaintiff and against defendant "Harry Giem Service Station" in the sum of One Hundred ($100.00) Dollars.

3. It is further Ordered, Adjudged and Decreed that defendants, "Harry Giem Service Station," its agents, servants and employees, W.C. Kelly and The Carmel Police Department, are permanently and perpetually enjoined and restrained from engaging in conduct found herein to be

unlawful and in violation of the United States Constitution.

4. It is further Ordered, Adjudged and Decreed that plaintiff's motion for certification as a class action be and is hereby denied.

5. It is further Ordered, Adjudged and Decreed that defendant "Harry Giem service Station," David Marshall, W.C. Kelly, and the City of Carmel, pay the costs of these proceedings to be taxed by the Clerk of the court and that execution issue for the same

DATED: 14 May 1979. BY THE COURT:

signed SPENCER WILLIAMS
U.S. DISTRICT JUDGE J.